

Chambers Procedures for Honorable Paul B. Lindsey

(Revised 4/11/2005)

General Information

- ▶ The Local Rules for the United States Bankruptcy Court for the District of Delaware will govern all procedural aspects of the adversary proceeding.
- ▶ For all adversary proceedings assigned to Judge Lindsey, the General Order RE: Pretrial Procedures In Adversary Proceedings shall apply.
- ▶ **In all cases, the plaintiff shall file a status report forty-five (45) days after the date of the scheduling order, each forty-five (45) days thereafter, and thirty (30), twenty (20), and ten (10) days prior to trial, setting out the status of each unresolved adversary proceeding and the plaintiff shall contemporaneously deliver a copy of the report to Chambers.**
- ▶ Contact Information:

Chambers: The Honorable Paul B. Lindsey
United States Bankruptcy Court for the District of Delaware
824 Market Street
5th Floor
Wilmington, Delaware 19801

Courtroom: 5

Telephone: (302) 252-2944

Email: PBL_Chambers@deb.uscourts.gov

Staff: Vivian Walls, Judicial Assistant
(302) 252-2898

Julia Reincke-Harmon, Courtroom Deputy
(302) 252-2546

Karen P. Muroski, Law Clerk
(302) 252-2900 ext. 5103

- ▶ Please do not contact Chambers via fax. No papers will be accepted by fax unless specifically requested by Chambers.
- ▶ Please make all deliveries during normal business hours to **5th Floor** Chambers. Please do not deliver binders or papers to the Clerk's Office.

Telephonic Appearances

- ▶ Parties who are unable to attend a hearing may appear telephonically providing they comply with the instructions and requirements set forth by the Court, entitled "Instructions for Telephonic Procedures" effective January 5, 2005. These instructions can be found on the Court's web site at: www.uscourts.gov, under the "Chambers" drop-down menu, and "Telephonic Procedures."
- ▶ Parties wishing to participate telephonically are responsible for making their own arrangements with CourtCall.
- ▶ Please do not call or email Chambers to request a telephonic appearance.
- ▶ Please note that local counsel are required to appear in person, rather than by telephone, for all hearings and ALL parties are strictly prohibited from participating telephonically using a cellular telephone.

Joint Pretrial Memorandum

- ▶ **All adversary proceedings must comply with the General Order RE: Pretrial Procedures Set for Trial Before Judge Paul B. Lindsey, revised 2/23/2005.** The General Order is available on Judge Lindsey's Chambers web page, which can be found under the "Chambers" drop-down menu on the Court's home page.
- ▶ The Joint Pretrial Memorandum must be filed no later than **three (3) business days** prior to the date set for trial and two (2) copies must be delivered contemporaneously to Chambers. Failure to file the Joint Pretrial Memorandum **and** deliver two (2) copies to Chambers within the time prescribed will result in adjournment of the trial without further notice to the parties and a hearing will be scheduled to show cause why sanctions should not be imposed.

- ▶ The parties must notify Chambers as soon as possible if a matter has settled and a Joint Pretrial Memorandum will therefore not be filed. If a matter has settled or has otherwise been resolved, counsel must file a notice of settlement or notice of adjournment of trial in the adversary proceeding. The parties shall also immediately advise Chambers, in writing, of any occurrence or circumstance which the parties believe may suggest or necessitate the adjournment or other modification of the trial setting.

Documents submitted to Chambers

- ▶ All documents delivered to Chambers shall have the docket number and date filed in the lower right-hand corner of the first page. **Please do not attach the notice of electronic filing.**
- ▶ All proposed orders must reference the docket number of the motion in the caption.
- ▶ All orders submitted following a hearing should be submitted **promptly**, no later than 10 days, and must be accompanied by a Certification of Counsel pursuant to LR 9013-1(j).
- ▶ Stipulations must show the original signatures of the parties and have attached a separate proposed Order. “So Ordered” clauses are unacceptable and will not be considered.
- ▶ For consideration of a motion where a Certificate of No Objection has been filed, the movant must submit one copy of: the motion, notice of the motion, the proposed order, and the Certificate of No Objection, otherwise, the matter will not be considered.
- ▶ Please note that all proposed scheduling orders for adversary proceedings filed after May 1, 2004 that include a claim for relief to avoid a preferential transfer must comply with Chief Judge Mary F. Walrath’s General Order RE: Procedures in Adversary Proceedings. A form scheduling order can be found on Judge Lindsey’s Chambers web page which shows an example of the form of order that should be submitted for approval. The form order may be modified; however, the deadlines contained in the proposed scheduling order should be dateless. In other words, the deadlines should count by a number of days from the filing of the responsive pleading.

Settlement Procedures

- ▶ There are special procedures for Motions to Approve a Settlement of an adversary proceeding:

For adversary proceedings where the lead bankruptcy case has been assigned to either Chief Judge Mary F. Walrath or Judge Peter J. Walsh, motions to approve the settlement should be filed in both the main bankruptcy case and the adversary proceeding. The proposed Order Approving the Settlement must be attached to the Motion and submitted to the respective Judge assigned to the main bankruptcy case. The proposed Order Dismissing the Adversary must be attached to the Motion and delivered to Judge Lindsey's Chambers subsequent to the approval of the Order for Settlement.

For all other cases, the Motion to Approve Settlement should be filed in both the adversary proceeding and the main bankruptcy case. Both a proposed Order Approving the Settlement and a proposed Order Dismissing the Adversary must be attached to the Motion and submitted to Judge Lindsey's Chambers.

Motions

- ▶ All motions filed in adversary proceedings shall be subject to District Court Local Rule 7.1.2 (briefs and schedule). **No hearing will be scheduled unless the Court directs.**

Parties may use the common practice of stating in the caption of the notice and motion, in lieu of a hearing date and time, that no hearing will be held unless requested or ordered by the Court, together with the required response or objection date. For purposes of motions before Judge Lindsey, this will be considered in compliance with LR 9004-1(b).

Once briefing is completed on the motion, the movant shall file a Notice of Completion of Briefing, which shall include a list of all relevant pleadings to the motion and related docket numbers, **OR**, a Certificate of No Objection, whichever is more appropriate under the circumstances. (Please note, if a Certificate of No Objection has been filed, a Notice of Completion of Briefing does not have to be filed) Counsel shall then deliver the relevant pleadings to Chambers.

All motions submitted under a Notice of Completion of Briefing should be unstapled and in a binder. Motions submitted under a Certificate of No Objection do not require a binder; however, if the pleadings to be submitted are substantial please submit them unstapled in a binder.

- ▶ If there is no objection to a motion, a Certificate of No Objection may then be filed at the conclusion of the objection period and a copy of the motion, the proposed order and the Certificate of No Objection should be forwarded to Chambers. Please do not send a copy of the motion to Chambers until the motion is ready to be ruled upon.

Hearing Agendas

- ▶ A Hearing Agenda is required for ALL hearings before Judge Lindsey and the agenda must be filed in both the main bankruptcy case and all adversary proceedings to which it relates.
- ▶ **Two (2) copies of the Hearing Agenda and one (1) copy of the associated Binder must be submitted to 5th Floor Chambers by 12 Noon, three (3) business days prior to the hearing.** An amended agenda may be filed until 12 Noon on the day prior to the hearing with two (2) copies delivered to Chambers along with one (1) copy of any additional pleadings or papers. A late hearing binder may result in a \$100 fine for Debtor's local counsel.
- ▶ Local counsel for the Debtor or Plaintiff is responsible for the timely filing, delivery, correctness and completeness of the Notice of Agenda and the related hearing binder. Piecemeal delivery of the Notice of Agenda and the relevant pleadings is not appropriate. Only those items listed on the Notice of Agenda and the relevant pleadings timely delivered to Chambers will be considered, absent compelling circumstances. If the Notice of Agenda and related pleadings are not delivered within the prescribed time limit, counsel will be sanctioned a \$500 fine.
- ▶ The Notice of Agenda shall include the docket number and filing date of each document listed and shall conform to Local Form 111.
- ▶ Counsel is required to inform the courtroom deputy immediately if the status of a matter listed on the Notice of Agenda as going forward has changed (i.e., settled or continued).

Hearings

- ▶ Counsel cannot reschedule or cancel a hearing without the consent of all interested parties and the courtroom deputy. This includes hearings where all matters have Certificates of No Objection filed. The Court will review those matters with Certificates of No Objection and determine if a hearing is necessary. Chambers will then notify counsel to file an Amended Agenda cancelling the hearing.
- ▶ Initial scheduling conferences in adversary proceedings **cannot** be continued. A preliminary hearing will be held and a Scheduling Order shall be presented.
- ▶ If requesting an expedited hearing, a Motion for Expedited Hearing shall be filed and a hard copy, along with a copy of the underlying Motion to be heard, should be delivered to Chambers for review. The Court will then determine the appropriate hearing date. This also

applies to Emergency Motions.

- ▶ Each counsel presenting a matter at a hearing is to bring to the scheduled hearing the following:

One unstapled copy of each proposed Order to be handed up for signature. The copy is to be the same as the proposed Order filed with the Motion and in the hearing binder, unless counsel advises the Court that the Order has been revised and presents a blacklined copy showing the changes made.

Status Conferences and Reports

- ▶ All Status Conferences before Judge Lindsey require a Notice of Agenda to be filed in both the main bankruptcy case and all adversary proceedings to which the Status Conference relates. In all instances, counsel for the plaintiff is required to file an up-to-date status report to be submitted with the Notice of Agenda. The Status Report should list the adversary proceedings grouped by Category A through J (see “Instructions for Filing Status Reports” on the Court’s home page at www.deb.uscourts.gov). The Status Report should detail the date(s) that answers are due, when notices of dismissal or settlement will be filed, discovery deadlines, trial dates, etc.
- ▶ **In all cases, the plaintiff shall file a status report forty-five (45) days after the date of the scheduling order, each forty-five (45) days thereafter, and thirty (30), twenty (20), and ten (10) days prior to trial, setting out the status of each unresolved adversary proceeding and the plaintiff shall contemporaneously deliver a copy of the report to Chambers.**

Hearing & CNO Binders (Please refer to the Hearing Binder Guide under the “Chambers” button on the Court’s web site)

- ▶ Hearing binders shall contain two (2) copies of the Notice of Agenda, along with one (1) copy of all documents listed as going forward, with each document tabbed in accordance with the Notice of Agenda. Please do not staple documents that are in the hearing binders.
- ▶ Judge Lindsey does not require that all pleadings be included in the hearing binder for Pretrial Conferences. The Complaint and Summons, etc. are not necessary. Plaintiff’s counsel shall submit an up-to-date Status Report, outlining the status of each case. The Status Report should list the adversary proceedings grouped by Category A through J (see “Instructions for Filing Status Reports” on the Court’s home page at www.deb.uscourts.gov). The Status Report should detail the date(s) that answers are due, when notices of dismissal or settlement will be

- filed, discovery deadlines, trial dates, etc.
- ▶ Proposed scheduling orders, if at all possible, should be submitted in the binder prior to the hearing. Please note that all proposed scheduling orders for adversary proceedings filed after May 1, 2004 that include a claim for relief to avoid a preferential transfer must comply with Chief Judge Mary F. Walrath's General Order RE: Procedures in Adversary Proceedings. A form scheduling order can be found on Judge Lindsey's Chambers web page which shows an example of the form of order that should be submitted for approval. The form order may be modified (for example to specify deadlines for disclosure of fact witnesses and/or expert rebuttal witnesses); however, the deadlines contained in the proposed scheduling order should be dateless. In other words, the deadlines should count by a number of days from the filing of the responsive pleading.
 - ▶ Hearing binders shall contain only the substantive documents necessary for the hearing (i.e., motions and responses going forward). Do not include Certificates of Service in the binder or the Service Lists filed with each pleading, unless an issue has been raised about sufficiency of service in which case only the appropriate portion of the Service List and Notice shall be included.
 - ▶ A separate CNO binder shall be filed by the Debtor with the hearing binder and Notice of Agenda containing any uncontested matters where Certificates of No Objection have been timely filed. The notice of the motion, the motion, and the proposed order must be included with all CNOs, and otherwise, will not be considered.
 - ▶ The hard copy of each document shall contain both the docket number and the date of filing of such document, written in the lower right corner of the first page. Again, do not include the notice of electronic filing.
 - ▶ Fee applications, if to be approved by Judge Lindsey, shall be submitted in the hearing binder. No separate binder is needed.
 - ▶ Generally, binders will be available for firms to pick up at 824 Market St., 5th Fl., outside the lobby of Courtroom 5 and Chambers after the hearing. Please remove them promptly.

Trials

- ▶ In all adversary proceeds filed after May 1, 2004 that include a claim for relief to avoid a preferential transfer, trial shall be held within ninety (90) days of Order Assigning the Adversary Proceeding to Mediation, or as soon thereafter as the Court's calendar permits. The trial date will be scheduled in the Order Assigning the Adversary Proceeding to Mediation. The parties do not need to contact Chambers for a trial date.

- ▶ Trials in all adversary proceedings that are on the same track will be conducted on a trailing docket. Adversary proceedings scheduled for trial on the same date and time will be called sequentially according to their adversary proceeding number starting from the lowest and continuing to the highest. Consequently, all parties are required to appear at the time scheduled without regard to the number of proceedings scheduled for trial that day or the number of their individual adversary proceeding.
- ▶ Trial briefs are optional but if a party chooses to submit a brief, it must be filed no later than three (3) business days prior to the day scheduled for trial. Trial briefs must be docketed and two (2) copies contemporaneously delivered to Judge Lindsey's Chambers.
- ▶ Counsel is required to notify Chambers as soon as possible if a matter has settled and will not be going forward. Counsel is required to file a notice of trial adjournment stating the reason(s) for adjournment of the trial. The parties shall also immediately advise Chambers, in writing, of any occurrence or circumstance which the parties believe may suggest or necessitate the adjournment or other modification of the trial setting.

Approved 6/2/2004; Revised 4/11/2005